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STATE OF DELAWARE

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RE: *Joel D. Tillman et al. v. Warner B. Tillman et al.*,
C.A. No. 2025-0475-PAF

Dear Counsel:

This letter decision resolves the defendants' motions to dismiss the plaintiffs' verified amended complaint. The court grants the motions.

I. BACKGROUND

The following recitation of the facts is drawn from the Verified Amended Derivative Complaint (the "Amended Complaint") and the documents incorporated by reference or integral thereto.[1]

A. The Company and Its Members

Tillman Enterprises, LLC (the "Company") is a Delaware limited liability company owned by members of the Tillman family.[2] The Company was formed after the Tillman family sold its bottled water business.[3] The sale proceeds were initially distributed among three trusts: Defendant Warner Tillman's personal trust and two grantor retained annuity trusts (the "GRATs") that Warner and his wife, Diane Tillman, had established in 1994 for the benefit of their four children.[4] Those children are Plaintiff Joel D. Tillman, Plaintiff Jenny R. Wiley (together with Joel,

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[1] Dkt. 14 ("Am. Compl."). Citations to the docket in this action are in the form of "Dkt. [#]." Because multiple parties in this case share the surname "Tillman," this letter decision refers to them by their first names after initially identifying each individual by their full names. No familiarity or disrespect is intended. Unless otherwise defined herein, exhibits submitted by the parties are cited as "X's Ex. __," with "X" representing the first name of the submitting party.

[2] Am. Compl. ¶¶ 9, 72.

[3] *Id.* ¶ 12 & n.1.

[4] *Id.* ¶¶ 10–11.

the "Plaintiffs"), Joshua Tillman, and Julie Hedegaard (collectively, with Plaintiffs, the "Tillman Siblings").[5]

In February 2003, the Company was formed and capitalized with approximately $40 million contributed by Warner's trust and the GRATs.[6] The GRATs were later divided into four trusts, resulting in Warner and each of the Tillman Siblings holding a 20 percent membership interest in the Company.[7] Warner and the Tillman Siblings are the Company's only members (the "Members"), and Warner is the Company's sole manager.[8]

Defendant George Lucas is the Company's accountant. He also served as the Company's controller from 2003 until 2023, when he was replaced by Joel.[9] He is not, and has never been, a resident of Delaware.[10]

B. Approval of Major Decisions Under the Operating Agreement

Under the Company's Operating Agreement, "Major Decisions" may not be taken unless approved by Members holding at least 85 percent of the Company's

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[5] *Id.* ¶ 14.

[6] *Id.* ¶¶ 16, 18.

[7] *Id.* ¶ 23.

[8] *Id.* ¶ 22.

[9] *Id.* ¶¶ 8, 78, 99.

[10] Lucas's Ex. A ¶¶ 3–7.

membership interests.[11] Major Decisions are defined to include, borrowing or lending more than $1 million on the Company's behalf, mortgaging or pledging the Company's assets, and transferring membership interests.[12] Although not within the definition of a Major Decision, dissolution and removal of a Manager are subject to the same 85% approval threshold.[13]

C. The Challenged Transactions

Beginning shortly after the Company's formation, Warner caused the Company to enter into multiple transactions that were not approved by the Company's other Members. For example, in 2004, the Company lent $390,000 to Tillman Colvin, LLC, an entity that Warner controlled. By the end of 2007, the outstanding balance on the loan had increased to approximately $1.88 million. The loan was repaid in 2013.[14]

The Company also extended credit directly to Members. In 2005, the Company lent Joshua approximately $1.47 million.[15] In 2006, Warner borrowed

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[11] Warner's Ex. B (the "Operating Agreement") § 3.4.

[12] *Id.*; *see* Am. Compl. ¶¶ 4, 68–69, 71–73.

[13] Operating Agreement §§ 5.1, 6.1. The Operating Agreement also prohibits Members from withdrawing, resigning, or dissociating from the Company. *Id.* § 2.6.

[14] Am. Compl. ¶ 25. Plaintiffs state in their Answering Brief that they are not pursuing claims based on the loans to Tillman Colvin. *See* Pls.' Answering Br. 8.

[15] Am. Compl. ¶¶ 33(a), 88(a).

approximately $1.11 million from the Company.[16] Beginning in 2014, Warner borrowed additional amounts from the Company, with his outstanding loans reaching approximately $5.5 million before being repaid in 2021.[17] The Amended Complaint does not allege any loans to Warner after 2016.

Between 2006 and 2009, the Company lent approximately $7 million to HS&WT, LLC ("HS&WT"), an entity owned by Warner.[18] Those loans were issued in exchange for thirty-five promissory notes.[19] Most of the HS&WT notes matured after six months, and all remained unpaid and in default in January 2010.[20]

In 2013, the Company borrowed $3 million from JPMorgan Chase Bank at an interest rate of 3.77 percent.[21]

D. The Company's Financial Reporting to its Members

Before 2016, the Company provided its Members only occasional asset and liability reports.[22] In late 2016, the Company began distributing its financial reports

[16] *Id.* ¶ 33(c).

[17] *Id.* ¶¶ 33(e), 88(d).

[18] Am. Compl. ¶ 26; *see* Pls.' Answering Br. 8–9.

[19] Am. Compl. ¶ 26; *see* Pls.' Answering Br. 8–9.

[20] Am. Compl. ¶ 26.

[21] *Id.* ¶¶ 39, 42.

[22] *Id.* ¶ 48.

more consistently, including quarterly profit and loss statements, asset and liability statements, and year-end financial statements.[23]

At times, the Company's year-end financial statements were revised after distribution. For example, in April 2022 and again in March 2023, the Company distributed revised year-end statements for the preceding fiscal year that reallocated a portion of Warner's repayment on his personal note from interest income to principal.[24] Warner informed the Members that Lucas made the revisions for tax purposes.[25]

The Company's year-end financial statements for 2020 also reflected changes to the accounting treatment of the HS&WT Notes. The statements reflected that bad debt expenses that had been recorded against the HS&WT Notes in 2008 and 2011 had been reversed.[26] The reversal occurred after Warner sold two Idaho homes in 2021 and 2022. Plaintiffs allege that Warner had previously represented to the Members that any proceeds of the sales of the Idaho homes would be used to repay

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[23] *Id.* ¶¶ 48–49, 52, 54. The Company's Statement of Assets and Liabilities as of December 31, 2016, and its Profit and Loss Report for 2016, which are integral to the Amended Complaint, are attached as exhibits to Warner's reply brief. *See* Warner's Exs. D & E.

[24] Am. Compl. ¶¶ 55, 58.

[25] *Id.* ¶ 58.

[26] *Id.*

the HS&WT Notes.[27] But after the sale of the homes, the HS&WT Notes remained outstanding and no interest payments had been made.[28]

After Joel assumed the role as the Company's controller in December 2023, he began requesting information from Lucas regarding the Company's outstanding debt.[29] Joel investigated Joshua's promissory note because the Company's records appeared to show that Joshua had not made any interest payments. Joshua informed Joel that he had been making interest payments, but the Company had recorded those payments as negative interest expenses rather than interest income.[30] As a result, the Company's reported interest income understated the interest it had actually received.

Joel also requested the amortization schedule for the HS&WT Notes.[31] Lucas provided the schedule to Joel in June 2024.[32] The amortization schedule reflected that, in 2007, the interest rates applicable to the HS&WT Notes had been decreased from approximately 10 percent to the applicable federal rate, which was below 4

[27] *Id.*

[28] *Id.*

[29] *Id.* ¶¶ 52, 64.

[30] *Id.* ¶ 52.

[31] *See id.*

[32] *Id.* ¶¶ 27, 66.

percent at the time.[33] According to the Amended Complaint, the decrease reduced the accumulated interest to approximately $2.8 million, from the approximately $53 million that otherwise would have accrued.[34]

At a meeting of the Company's Members in October 2024, Warner suggested for the first time that HS&WT might file for bankruptcy and, as a result, might not repay its indebtedness to the Company.[35]

E. Procedural History

Plaintiffs filed their original complaint on May 1, 2025. The original complaint named only Warner and the Company as defendants. After Warner and the Company filed a motion to dismiss and a supporting opening brief, Plaintiffs filed the Amended Complaint on August 5, 2025, adding Lucas as a defendant. The gravamen of the Amended Complaint is that Warner, as the Company's Manager, aided and abetted by Lucas, engaged in a series of unauthorized, self-interested

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[33] *Id.*

[34] *Id.* ¶ 27.

[35] *Id.* ¶ 67.

transactions that breached the Operating Agreement and Warner's fiduciary duties to the Company and its other Members.

The Amended Complaint contains five counts. Counts I through III are asserted against Warner for breach of fiduciary duty, breach of contract, and unjust enrichment, respectively. Counts IV and V are asserted against Lucas for aiding and abetting Warner's breach of fiduciary duty and negligent misrepresentation, respectively.[36] Plaintiffs seek a single form of relief: equitable dissolution of the Company, which they contend is necessary because Warner's alleged conduct has left them trapped in the Company with no viable contractual means of exiting.[37]

Warner and Lucas each move to dismiss the Amended Complaint. Lucas moves under Court of Chancery Rule 12(b)(2) for lack of personal jurisdiction, and both Defendants move under Rule 12(b)(6) for failure to state a claim.

II. ANALYSIS

A motion under Court of Chancery Rule 12(b)(2) challenges the court's exercise of personal jurisdiction. The court first considers Lucas's Rule 12(b)(2) motion before addressing the Rule 12(b)(6) motions. *See Branson v. Exide Elecs.*

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[36] *Id.* ¶¶ 80–108.

[37] *See Id.*, Prayer for Relief ¶ F.

Corp., 625 A.2d 267, 269 (Del. 1993) ("A court without personal jurisdiction has no power to dismiss a complaint for failure to state a claim.").

A. Personal Jurisdiction Over Lucas

"[T]he plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the defendant." *Ryan v. Gifford*, 935 A.2d 258, 265 (Del. Ch. 2007). This burden is an "evidentiary burden, not a pleading burden." *Harris v. Harris*, 289 A.3d 277, 295–96 (Del. Ch. 2023). "In ruling on a Rule 12(b)(2) motion, the court may consider the pleadings, affidavits, and any discovery of record." *Ryan*, 935 A.2d at 265. Because no evidentiary hearing has been held, Plaintiffs "need only make a *prima facie* showing of personal jurisdiction, and the record is construed in the light most favorable to the plaintiff." *Id.* (citation modified).

Plaintiffs seek to establish personal jurisdiction over Lucas under two theories. First, Plaintiffs argue that Lucas waived his personal jurisdiction defense. Second, they contend that Lucas is subject to jurisdiction under Delaware's long-arm statute, 10 *Del. C.* § 3104 (the "Long-Arm Statute").

1. Lucas did not waive his personal jurisdiction defense.

Plaintiffs argue that Lucas waived his personal jurisdiction defense because he asserted it too late. The waiver argument rests on two filing errors.[38] The chronology of the filings in this case demonstrates that Lucas did not waive his right to challenge personal jurisdiction.

Plaintiffs filed their original complaint on May 1, 2025. On June 13, lawyers from McCollom D'Emilio Smith Uebler LLC ("McCollom D'Emilio") entered their appearance for Warner and the Company and filed a motion to dismiss under Court of Chancery Rule 12(b)(6) for failure to state a claim.[39] In response to that motion, Plaintiffs filed the Amended Complaint on August 5, which added Lucas as a defendant. Lucas was served with the Amended Complaint on August 7.[40] On August 18, McCollom D'Emilio filed a motion to dismiss the Amended Complaint under Rule 12(b)(6).[41] That motion is titled: "DEFENDANTS WARNER TILLMAN AND TILLMAN ENTERPRISES LLC'S MOTION TO DISMISS PLAINTIFFS' AMENDED DERIVATIVE COMPLAINT UNDER RULE

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[38] Pls.' Answering Br. 62.

[39] Dkts. 7 & 8.

[40] Dkt. 17.

[41] Dkt. 18.

12(B)(6)."[42] Although the title of the motion did not mention Lucas, the body of the motion identifies Lucas as one of the movants. In addition, the signature block indicates that McCollom D'Emilio also represented Lucas, even though the firm never entered a formal appearance on his behalf. According to the Plaintiffs, four days later:

> [C]ounsel from Grogan Hesse & Uditsky, P.C. emailed Plaintiffs' counsel stating that Lucas was seeking an extension of time to respond to the Complaint and that he "is in the process of obtaining counsel." When Plaintiffs' counsel inquired further, they were informed that "[w]e do not represent George Lucas at this time, but I appreciate you allowing us to request the extension on his behalf."[43]

On August 25, the law firm of Gordon Rees Scully Mansukhani LLP filed a motion to dismiss on behalf of Lucas. The motion cited Court of Chancery Rules 12(b)(1) and 12(b)(6) as the grounds for the motion.[44] After recognizing that the reference to Rule 12(b)(1) was a typographical error, Lucas filed an amended motion to dismiss on September 24, citing Rules 12(b)(2) and 12(b)(6) as grounds for dismissal, along with his opening brief.[45] Five days later, the parties amended their

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[42] *Id.*

[43] Pls.' Answering Br. 4. Grogan Hesse & Uditsky, P.C. has not entered an appearance in this action for Lucas.

[44] Dkt. 19.

[45] Dkt. 23.

stipulated briefing schedule, extending the deadline for Plaintiffs' answering brief to November 14—51 days after Lucas filed his amended motion.[46]

Plaintiffs contend that each of these two procedural missteps preclude Lucas from seeking dismissal for lack of personal jurisdiction. The court disagrees.

A personal jurisdiction defense may be waived by the "failure to assert it seasonably, by formal submission in a cause, or by submission through conduct." *Ross Hldg. & Mgmt. Co. v. Advance Realty Gp., LLC*, 2010 WL 1838608, at *11 (Del. Ch. Apr. 28, 2010) (citation modified). "Under Delaware law, a waiver is found where a party had actual or constructive notice of a known right, and that the party voluntarily and intentionally relinquished that known right." *Mack v. Rev Worldwide, Inc.*, 2020 WL 7774604, at *14 (Del. Ch. Dec. 30, 2020) (citation modified). "Court of Chancery Rule 12 codifies when a defendant waives certain defenses[,]" including lack of personal jurisdiction under Rule 12(b)(2). *Id.; see* Ct. Ch. R. 12.

Rule 12(h)(2) permits a party to "assert a defense listed in Rule 12(b)(2)–(5) by motion filed before a responsive pleading," or preserve the defense in a responsive pleading or an amendment permitted as a matter of course if a Rule 12

[46] *See* Dkts. 29 & 30.

motion is not filed. "Otherwise, a party waives any defense listed in Rule 12(b)(2)–(5)." Ct. Ch. R. 12(h)(2)(C). Rule 12(g)(2) provides that, "[e]xcept as provided in Rule 12(h)(2)–(4), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." Ct. Ch. R. 12(g)(2).[47]

The Delaware Supreme Court addressed the application of Rule 12's waiver provisions in *Plummer v. Sherman*, 861 A.2d 1238 (Del. 2004). The Court stated that "[t]he provisions in Rule 12 are designed to prevent a litigant from using a series of motions as a dilatory tactic." *Id.* at 1243. There, the defendant filed an answer without asserting a personal jurisdiction defense, later moved to dismiss for failure to prosecute, and first raised the personal jurisdiction defense at oral argument on the motion. *Id.* at 1241–44. The Court held that the personal jurisdiction defense was waived because the defendant was "required to expressly raise the defense of lack of personal jurisdiction no later than her answer." *Id.* at 1244.

[47] Although Rule 12 was revised in 2024, the accompanying Comment explains that "[n]o substantive change in the interpretation of the rule was intended, and prior Delaware authorities interpreting the rule remain applicable." In re Amendments to Rules 1–6, 8, 9, 11–15, 23, 23.1, 79, 79.1, 79.2 & 174 of the Court of Chancery Rules, at 36 (Del. Ch. July 12, 2024) (ORDER).

Having found the personal jurisdiction defense untimely, the Court considered whether the defendant could have preserved it by amending her answer. *Id.* The Court observed that "the Delaware Rules of Civil Procedure are patterned after" the Federal Rules and that cases interpreting the Federal Rules "are appropriate for determining the proper interpretation" of the Delaware Rules. *Id.* at 1242. The Court also recognized "authority for the proposition that a party may amend her initial Rule 12 motion or answer to add the defense of lack of personal jurisdiction." *Id.* at 1244 (citing 6 Moore's Federal Practice § 12.31 (3d ed. 2004)). The Court noted, however, that the ability to amend is not without limitation. *Id.* (citing *Nycal Corp. v. Inoco PLC*, 949 F. Supp. 1115, 1119–20 (S.D.N.Y. 1997)).[48] Under the circumstances of the case before it, the Court held that the defendant could not amend her answer because the time to do so as a matter of course under Rule 15(a) had passed. *Plummer*, 861 A.2d at 1244.

[48] In *Nycal*, the district court recognized that federal cases had permitted amendment or supplementation of a pending Rule 12 motion to add an omitted defense. *See* 949 F. Supp. at 1119. The court observed that those decisions considered the timing of the request and the interval between the omission and correction. *Id.* The court also noted that whether the omission "was inadvertent also should play a role in the analysis, as should the defendant's good or bad faith." *Id.* at 1119–20. It nevertheless denied supplementation because it found that the defendant had deliberately omitted the personal jurisdiction defense to obtain a stay of discovery and avoid a deposition, and asserted the defense only after that strategy failed. *Id.* at 1120.

Consistent with *Plummer*'s observation, leading federal treatises recognize a line of authority permitting amendment or supplementation of a pending Rule 12 motion to add an omitted defense, including lack of personal jurisdiction.[49] Several federal courts have taken that approach. For example, in *Bechtel v. Liberty National Bank*, the Ninth Circuit held that a defendant did not waive an omitted Rule 12 defense where it amended its pending motion to add the defense more than two months after filing the original motion, but "well in advance of the hearing" and the filing of a responsive pleading. 534 F.2d 1335, 1341 (9th Cir. 1976). The court explained that Rule 12(h)(1) "'does not in any way prevent a judge in his discretion from permitting a party to expand the grounds of motion well in advance of a hearing.'" *Id.* at 1341 n.8 (quoting *MacNeil v. Whittemore*, 254 F.2d 820, 821 (2d Cir. 1958)).[50] The Seventh Circuit similarly concluded that a third-party defendant,

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[49] 2 Moore's Federal Practice § 12.31[3] (3d ed. 2026) (recognizing that there is "authority for the proposition that a party may amend or supplement its initial Rule 12 motion or its answer to add the defense of lack of personal jurisdiction"); 5 Wright & Miller's Federal Practice and Procedure § 1194 (4th ed. 2026) (explaining that courts have permitted a Rule 12(b) motion to be amended to add another Rule 12(b) defense when amendment is sought promptly and before the parties have relied on the original grounds); 5C Wright & Miller's Federal Practice and Procedure § 1389 (3d ed. 2026) (observing that certain federal courts counsel against "the mechanical waiver of jurisdictional and procedural rights that have been inadvertently omitted").

[50] *See also Polaroid Corp. v. Feely*, 889 F. Supp. 21, 24 (D. Mass. 1995) ("It is well established that the Court has discretion to allow a motion to amend a motion to dismiss

after omitting a venue defense from its initial motion, "supplemented its contentions before the district court took up the matter and so avoided forfeiting the venue point" under Rule 12(h)(1). *FDIC v. Hartford Ins. Co. of Ill.*, 877 F.2d 590, 591 (7th Cir. 1989) (citing *Bechtel*, 534 F.2d at 1341). The Third Circuit has also distinguished cases in which "a pre-answer motion was amended or supplemented prior to argument before the district court" from circumstances in which a personal jurisdiction defense was not raised "until *after* argument and *after* the court rendered its decision on the motion." *Myers v. Am. Dental Ass'n*, 695 F.2d 716, 721 (3d Cir. 1982) (emphasis in original).

In determining whether to permit amendment or supplementation, federal courts have considered the timing of the amendment, the reason for the omission, whether the original motion remains pending, and whether amendment would result in prejudice or delay. *See, e.g.*, *Nycal*, 949 F. Supp. at 1119–20; *Jenny Yoo Collection, Inc. v. Watters Design Inc.*, 2017 WL 4997838, at *6 (S.D.N.Y. Oct. 20,

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prior to a hearing and decision on the original motion as long as the motion to amend is made in good faith and the adverse party will not be prejudiced."); *Wiggins v. Jedson Eng'g, Inc.*, 2020 WL 6993840, at *1 (E.D. Tenn. Apr. 29, 2020) ("Federal Rule of Civil Procedure 12 governs motions and it is established that failure to include the defense of lack of personal jurisdiction in a Rule 12(b) motion results in a waiver of the defense. However, numerous courts have held that Rule 12(h) does not prevent the Court, in its discretion, from allowing amendment of a Rule 12(b) motion to include a previously omitted defense.").

2017) (considering factors discussed in *Nycal* and permitting supplemented Rule 12 motion); *Britton v. Cann*, 682 F. Supp. 110, 113 (D.N.H. 1988) ("Amendment is allowed if sought in good faith, promptly, and before the opposing party has relied on the original grounds, with consideration [of]. . . whether the opposing party will be unduly prejudiced or the case unduly delayed."); *Adams v. Jackson*, 218 F. Supp. 2d 1006, 1008–09 (N.D. Ind. 2002) (permitting a defendant to supplement a pending Rule 12(b)(6) motion to add a personal jurisdiction defense where the original motion had not yet been considered and the plaintiffs had not yet responded because doing so "would do little or no harm" to the purpose of Rule 12's waiver rule).[51]

Other federal courts have, however, found waiver where the defendant raised an omitted defense through a second motion rather than by amending the initial

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[51] *See also Vanslambrouck v. Fairfield Indus. Inc.*, 2011 WL 2435947, at *1–2 (M.D. Fla. June 15, 2011) (permitting amendment of a pending Rule 12(b)(6) motion to add a personal jurisdiction defense ten days after the original motion was filed and before the plaintiff's response was due); *Goldberg v. Rome McGuigan, P.C.*, 2021 WL 3520725, at *3 (C.D. Cal. Apr. 23, 2021) (granting leave to amend pending Rule 12 motions to add personal jurisdiction objections); *Remley v. Lockheed Martin Corp.*, 2001 WL 681257, at *3 (N.D. Cal. June 4, 2001) (recognizing that "several cases hold that a defendant" may amend a pending Rule 12 motion to add a waivable defense if amendment occurs before the hearing and as soon as possible); *Friedman v. World Transp., Inc.*, 636 F. Supp. 685, 688 (N.D. Ill. 1986) (permitting amendment of a pending Rule 12 motion three days after filing to add an omitted venue defense); *Ruffalo v. Civiletti*, 539 F. Supp. 949, 954 (W.D. Mo. 1982) ("We do not believe that waiver takes place when leave to amend is sought promptly and before ruling on the original motion.").

motion. *See, e.g.*, *Albany Ins. Co. v. Almacenadora Somex, S.A.*, 5 F.3d 907, 910–11 (5th Cir. 1993) (rejecting an argument that a second motion could be construed as an amendment of the first); *Consol. Rail Corp. v. Grand Trunk W. R.R. Co.*, 592 F. Supp. 562, 567 (E.D. Pa. 1984) (finding waiver where the personal jurisdiction defense was raised in a separate motion after the plaintiff had responded to the initial motion); *see also Cath. Mut. Relief Soc'y of Am. v. Acer Am. Corp.*, 2023 WL 3997977, at *5–6 (E.D. Pa. June 14, 2023) (rejecting an argument that a second motion effectively amended the still-pending first motion).

This court's analysis of waiver of defenses in *Mack v. Rev Worldwide, Inc.* is consistent with the federal approach. *See* 2020 WL 7774604, at *14–17. There, the court considered whether a defendant had waived a Rule 12(b)(3) defense by asserting an additional ground for that defense in a later motion. *Id.* The court explained that in applying the provisions of Rule 12, "it is important to keep in mind that they are designed to prevent a litigant from using a series of motions as a dilatory tactic, to direct a party to take timely action on answers or motions, and to expedite litigation and encourage disputes to be resolved on their merits." *Id.* at *14 (citation modified). In finding no waiver, the court observed that the defendant had not engaged in dilatory motion practice, the plaintiff had notice and an opportunity to respond, and "[m]ost importantly," the plaintiff suffered no prejudice, which the court described as the "touchstone" for determining whether a right has been waived. *Id.* at *15, *17. Although *Mack* did not involve waiver of a personal jurisdiction defense, its analysis of the policy behind the waiver of defenses in general is pertinent here.

Considering all of the Plaintiffs' arguments in favor of waiver and the factual circumstances of this case, the court declines to find that the unauthorized August 18 motion filed on Lucas's behalf, or the August 25 motion containing a typographical error that was timely corrected, constituted a waiver of Lucas's personal jurisdiction defense. Under long-standing practice in this court, a party need not file a supporting brief with a motion to dismiss. *See* Ct. Ch. R. 7(b)(2)(D). The motion is often a bare-bones filing, identifying the grounds for dismissal by Rule number (*e.g.*, Rule 12(b)(6) or Rule 23.1), with a representation that the grounds will be explained in a brief to be filed in accordance with a schedule agreed upon by the parties or fixed by the court. Consistent with this practice, Lucas's two-sentence motion of August 25 identified Rule 12(b)(1) and 12)(b)(2) as grounds for dismissal, with substantive briefing to follow. Lucas filed an amended motion to identify Rule 12(b)(2) as grounds for dismissal, not Rule 12(b)(1), and filed his supporting brief at that time. Nothing suggests, and Plaintiffs do not argue, that Lucas engaged in dilatory tactics or sought a strategic advantage through these filing errors. *See Britton*, 682 F. Supp. at 113 (permitting an inadvertently omitted personal jurisdiction defense where the omission was made in good faith and caused no prejudice). Plaintiffs had notice that Lucas contested personal jurisdiction well in advance of their answering brief and the hearing. They did not object to the amended motion when it was filed, and five days later the parties extended Plaintiffs' deadline to file their answering brief.[52] Plaintiffs fully briefed the merits of the personal jurisdiction defense, and they identify no prejudice resulting from either filing miscue. The court declines to find that Lucas waived his Rule 12(b)(2) defense.

2. Plaintiffs have failed to show that jurisdiction may be exercised over Lucas.

Under Delaware law, the exercise of personal jurisdiction has two requirements. First, the plaintiff must identify a valid method of serving process on the defendant. Second, the exercise of personal jurisdiction through the service of process must rest on sufficient minimum contacts between the defendant and Delaware that it "'does not offend traditional notions of fair play and substantial justice.'" *Matthew v. Fläkt Woods Gp. SA*, 56 A.3d 1023, 1027 (Del. 2012) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

[52] *See* Dkts. 29 & 30.

Plaintiffs argue that this court has personal jurisdiction over Lucas under the Long-Arm Statute based on the conspiracy theory of jurisdiction established in *Istituto Bancario Italiano SpA v. Hunter Engineering Co., Inc.*, 449 A.2d 210 (Del. 1982).[53] Under the conspiracy theory of jurisdiction,

> a conspirator who is absent from the forum state is subject to the jurisdiction of the court, assuming [the defendant] is properly served under state law, if the plaintiff can make a factual showing that: (1) a conspiracy to defraud existed; (2) the defendant was a member of that conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy occurred in the forum state; (4) the defendant knew or had reason to know of the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

Istituto Bancario, 449 A.2d at 225. "[I]f the purposeful act or acts of one conspirator are of a nature and quality that would subject the actor to the jurisdiction of the court, all of the conspirators are subject to the jurisdiction of the court." *Id.* at 222. "By satisfying the requirements for the conspiracy theory of jurisdiction, a plaintiff satisfies both elements of the two-prong jurisdictional test." *MacLaughlan v. Einheiber*, 2026 WL 539796, at *7 (Del. Ch. Feb. 26, 2026).

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[53] This is the Plaintiffs' sole basis for asserting personal jurisdiction over Lucas. *See* Dkt. 43 ("Oral Arg. Tr.") at 48–49; Pls.' Answering Br. 61–62.

Plaintiffs' effort to invoke the conspiracy theory of jurisdiction fails, at a minimum, because they have not satisfied the third element—that "a substantial act or substantial effect in furtherance of the conspiracy" occurred in Delaware. *Istituto Bancario*, 449 A.2d at 225. Plaintiffs concede that they have not alleged a substantial act, or any act, that occurred in Delaware.[54] Instead, they contend that Lucas allegedly aided and abetted Warner's breaches of fiduciary duty and "[t]he effects of the scheme were felt in Delaware, where the Company exists, and its internal affairs are governed."[55] Delaware law forecloses that argument.

The conspiracy theory of jurisdiction "merely provides a framework with which to analyze a foreign defendant's contacts with Delaware." *Hercules Inc. v. Leu Tr. & Banking (Bahamas) Ltd.*, 611 A.2d 476, 482 n.6 (Del. 1992). "A conspiracy is not an independent jurisdictional hook: there must still be an anchoring Delaware act." *Altabef v. Neugarten*, 2021 WL 5919459, at *8 (Del. Ch. Dec. 15, 2021). As Vice Chancellor Lamb wrote in *Iotex Communications, Inc. v. Defries*:

> [I]n the case of Delaware corporations having no substantial physical presence in this State, an allegation that a civil conspiracy caused injury to the corporation by actions wholly outside this State will not satisfy

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[54] Oral Arg. Tr. at 52 ("I cannot identify a specific Delaware act that I think supports personal jurisdiction over Mr. Lucas, unfortunately.").

[55] Pls.' Answering Br. 69; *see also* Oral Arg. Tr. at 52.

> the requirement found in the Supreme Court's opinion in *Istituto Bancario* of a substantial effect in the forum state.

1998 WL 914265, at *8 (Del. Ch. Dec. 21, 1998) (citation modified); *see Aviation W. Charters, LLC v. Freer*, 2015 WL 5138285, at *3 (Del. Super. July 2, 2015) ("Plaintiff's connection to Delaware is simply their incorporation status, and the Court finds that alone will not support the 'substantial effect' requirement."); *In re Bracket Hldg. Corp. Litig.*, 2017 WL 3283169, at *14 (Del. Super. July 31, 2017) (granting motion to dismiss where the "sole connection to Delaware" was the company's incorporation status).

Plaintiffs place great weight on this court's decision in *Harris*, but that case does not help them. In *Harris*, the plaintiffs challenged transactions orchestrated by a corporation's controlling stockholder and her advisers. 289 A.3d at 315. As here, the plaintiffs in *Harris* asserted that the corporation's accountant was subject to personal jurisdiction under the conspiracy theory of jurisdiction. *See id.* at 318, 338.[56] The accountant moved to dismiss for lack of personal jurisdiction. *Id.* at 316–17.

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[56] The *Harris* plaintiffs also asserted other grounds for obtaining personal jurisdiction over the accountant, but they are not pertinent to the issues presented in this case.

The court held that the plaintiffs had asserted a non-frivolous basis for personal jurisdiction under the conspiracy theory sufficient to warrant jurisdictional discovery. *Id.* at 338–42.[57] Crucial to that determination, however, was the plaintiff's ability to identify "a Delaware-directed act," to satisfy the statutory basis for jurisdiction under the Long-Arm Statute. *Harris*, 289 A.3d at 338, 341. The court concluded two acts were directed at Delaware. One was the appointment of a Delaware trustee to domesticate a trust. *Id.* at 338. The other was a redomestication merger, moving the corporation's domicile from Delaware to New Jersey. *Id.* at 341.

Plaintiffs rely on *Harris* because Lucas was similarly situated as an accountant to the company and is alleged to have participated in the fiduciary's misconduct.[58] But that is not enough. A properly pleaded claim for aiding and abetting establishes only that Warner's acts can be attributed to Lucas for jurisdictional purposes. *Zync, Inc. v. Porsche Invs. Mgmt., S.A.*, 2026 WL 1470324, at *8 (Del. Ch. May 26, 2026). "There still must be a Delaware-directed act." *Id.*; *see Harris*, 289 A.3d at 341.

[57] After jurisdictional discovery, the court concluded that the evidence supported this court's exercise of jurisdiction over the adviser because he was sufficiently involved in both Delaware directed acts. *Harris v. Harris*, C.A. No. 2019-0736-JTL, Dkt. 706 ¶ 10 (Del. Ch. Apr. 16, 2024) (ORDER). Plaintiffs do not request jurisdictional discovery, nor would it be warranted here given the Plaintiffs' concessions. *See* Oral Arg. Tr. 52.

[58] Pls.' Answering Br. 70–71.

Unlike in *Harris*, Plaintiffs here admittedly identify no Delaware-directed act or effect capable of anchoring jurisdiction over Lucas. The court therefore cannot exercise personal jurisdiction over him.

Because the court lacks personal jurisdiction over Lucas, it need not address whether exercising jurisdiction would comport with due process. The dismissal of Lucas under Rule 12(b)(2) also obviates any need to address the merits of Counts IV and V, which are asserted solely against Lucas. *See, e.g.*, *MacLaughlan*, 2026 WL 539796, at *9.

B. Plaintiffs' Claims Against Warner Must Be Dismissed Under Rule 12(b)(6).

On a motion to dismiss under Rule 12(b)(6), the court must "accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as 'well-pleaded' if they provide the defendant notice of the claim, [and] draw all reasonable inferences in favor of the plaintiff." *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011). Dismissal is appropriate only if the non-moving party "could not recover under any reasonably conceivable set of circumstances susceptible of proof." *Id.* at 536.

The court, however, need not accept as true conclusory allegations without specific supporting factual allegations, nor is the court required to accept every strained interpretation of the allegations proposed by the plaintiff. *In re Gen. Motors*

(Hughes) S'holder Litig., 897 A.2d 162, 168 (Del. 2006); *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001). In addition, "a complaint may, despite allegations to the contrary, be dismissed where the unambiguous language of documents upon which the claims are based contradict the complaint's allegations." *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 139 (Del. Ch. 2003); *see also Orman v. Cullman*, 794 A.2d 5, 16 n.9 (Del. Ch. 2002) ("If a plaintiff's complaint alleges a fact that is unambiguously contradicted by an integral document incorporated into the complaint *and* there are no other facts in that document supporting the allegation, the Court need not accept as true the fact as alleged in the complaint.").

1. Warner's laches defense

Warner advances multiple grounds for dismissal. The court need only address one—laches—because it is dispositive of all claims.

"Laches is an affirmative defense that the plaintiff unreasonably delayed in bringing suit after the plaintiff knew of an infringement of his rights, thereby resulting in material prejudice to the defendant." *U.S. Cellular Inv. Co. of Allentown v. Bell Atl. Mobile Sys., Inc.*, 677 A.2d 497, 502 (Del. 1996) (citing *Nationwide Mut. Ins. Co. v. Starr*, 575 A.2d 1083, 1088 (Del. 1990)). Generally, the burden to prove laches "rests upon the defendants." *Hudak v. Procek*, 806 A.2d 140, 154 (Del. 2002). Nevertheless, laches can be established on a motion to dismiss if "it is clear from the face of the complaint that [the] affirmative defense exists and that the plaintiff can prove no set of facts to avoid it." *Reid v. Spazio*, 970 A.2d 176, 183 (Del. 2009); *see Certainteed Corp. v. Celotex Corp.*, 2005 WL 217032, at *6 (Del. Ch. Jan. 24, 2005); *In re Sirius XM S'holder Litig.*, 2013 WL 5411268, at *4 (Del. Ch. Sep. 27, 2013); *Reilly v. Horn*, 2025 WL 2781735, at *4 (Del. Ch. Sep. 30, 2025), *aff'd*, 2026 WL 1256598 (Del. May 7, 2026) (ORDER); *Richards v. Shipwright SPAC I, LLC*, 2025 WL 3242627, at *2 (Del. Ch. Nov. 19, 2025) (ORDER), *aff'd*, 2026 WL 2491494 (Del. Aug. 25, 2026) (ORDER).

2. Plaintiffs' claims against Warner are presumptively time-barred.

Laches is an equitable doctrine that "will prevent someone who slumbers on her rights and delays unreasonably in filing suit from being permitted to prosecute her claims." *TrustCo Bank v. Mathews*, 2015 WL 295373, at *5 (Del. Ch. Jan. 22, 2015); *accord Murray v. Rolquin*, 2023 WL 2421687, at *9 (Del. Ch. Mar. 9, 2023). In applying this doctrine, equity follows the law, and the court will generally "apply the period of limitations by analogy as a measure of the period of time in which it is reasonable to file suit." *Levey v. Brownstone Asset Mgmt., LP*, 76 A.3d 764, 769 (Del. 2013). The court affords "significant weight to the analogous statute of limitations and will presumptively bar an action filed after the limitations period."

Moelis & Co. v. W. Palm Beach Firefighters' Pension Fund, 360 A.3d 215, 237 (Del. 2026) (citation modified).

The analogous limitations period for Plaintiffs' claims against Warner for breach of fiduciary duty, breach of contract, and unjust enrichment is three years. *See* 10 *Del. C.* § 8106(a); *Reilly*, 2025 WL 2781735, at *6 (breach of fiduciary duty and unjust enrichment); *Levey*, 76 A.3d at 768 (breach of contract).

The first step in determining whether an action is time-barred is identifying when the action accrued. *U.S. Cellular*, 677 A.2d at 503. "[A] cause of action accrues at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action." *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 732 (Del. 2020) (citation modified); *accord Moelis*, 360 A.3d at 231.

"In Delaware, for contract claims, the wrongful act occurs at the time a contract is breached." *ISN Software*, 226 A.3d at 732. Plaintiffs allege that Warner breached the Operating Agreement by making Major Decisions without obtaining the Company's Members' approval.[59] The last challenged Major Decision occurred, at the latest, in 2016.[60] The breach of contract claim therefore accrued no later than December 31, 2016, and is presumptively time-barred.

[59] Am. Compl. ¶ 88.

[60] *See id.* ¶ 88(d).

Similarly, "[a] breach of fiduciary claim accrues at the moment of the wrongful act—not when the harmful effects of the act are felt—even if the plaintiff is unaware of the wrong." *Reilly*, 2025 WL 2781735, at *4 (citation modified). Delaware courts have employed three different methods for determining when a breach of fiduciary duty claim accrues: the "discrete act" method, the "continuing wrong" method, and the "separate accrual" method. *Lebanon Cty. Emps.' Ret. Fund v. Collis*, 287 A.3d 1160, 1178–79 (Del. Ch. 2022). Plaintiffs argue for the continuing wrong method, while Defendants argue for the discrete act method.

The discrete act method is the traditional approach and "applies in the vast majority of cases." *Id.*; *see also Moelis*, 360 A.3d at 231–32. It applies "'when a claim arises at a distinct point in time and is effectively complete as of that date, even if it has ongoing effects or implications.'" *Moelis*, 360 A.3d at 232 (citation modified). The continuing wrong method applies "more rarely" and "treats a series of inextricably related decisions and conscious non-decisions as a continuing wrong." *Collis*, 287 A.3d at 1178. Under the continuing wrong approach, "the wrongful act is not complete, and the limitations period does not begin to run, until the continuing wrong ceases." *Id.*

The discrete act method applies here. Plaintiffs challenge a series of discrete management decisions by Warner as breaches of his fiduciary duties. They challenge the issuance of the HS&WT Notes between 2006 and 2009,[61] the reduction of the interest rates on those notes "beginning in 2007,"[62] and Warner's failure to take action after the HS&WT Notes went into default in 2010.[63] They also challenge loans issued to Warner and his affiliates between 2014 and 2016.[64] These alleged wrongs arose from decisions and transactions occurring at identifiable points in time.

Plaintiffs resist the application of the discrete act method by characterizing Warner's conduct as an ongoing course of self-dealing. They argue that Warner continuously used the Company as a source of favorable financing by lending Company funds to himself and entities he controlled, continuing to lend despite existing defaults, failing to collect outstanding debt, and causing the Company to borrow funds on less favorable terms. Viewed together, Plaintiffs contend that conduct constitutes "one continuous act of self-dealing."[65] Plaintiffs' argument is unpersuasive.

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[61] Am. Compl. ¶ 81(c)–(d); *see also* Pls.' Answering Br. 8–9.

[62] Am. Compl. ¶ 81(f). Count I also alleges that Warner breached his fiduciary duties by failing to provide the Members with an accumulated interest report for the outstanding loans. *Id.* ¶ 81(g). Even assuming this asserts a claim for breach of fiduciary duty against Warner, the Plaintiffs were also on inquiry notice of that alleged breach for more than three years before filing the original complaint in May 2025.

[63] *Id.* ¶ 81(e).

[64] *Id.* ¶ 81(a), (c).

[65] Pls.' Answering Br. 30.

In *Moelis*, the Delaware Supreme Court rejected application of the continuing wrong method because the challenged conduct was complete when undertaken and complete relief was available at that time, notwithstanding its ongoing effects and implications. *Moelis*, 360 A.3d at 231–32. Consistent with that reasoning, the continuing wrong method applies when a series of acts is "so inexorably intertwined that there is but one continuing wrong." *AM Gen. Hldgs. LLC v. Renco Gp., Inc.*, 2016 WL 4440476, at *12 (Del. Ch. Aug. 22, 2016). The Amended Complaint does not allege an indivisible wrong. Rather, the alleged course of self-dealing consists of identifiable lending, financing, and interest-rate decisions made at different points over more than a decade. Merely because those decisions involved the same fiduciary, benefited the same interests, or could be characterized collectively as self-dealing does not make them an inexorably intertwined continuing wrong. *See Kahn v. Seaboard Corp.*, 625 A.2d 269, 271 (Del. Ch. 1993) (rejecting a continuing wrong theory arising from an allegedly self-interested transaction because the alleged wrong occurred when the transaction created enforceable legal rights). Nor does the continued existence of the resulting debt transform the transactions that created it into an ongoing wrongful act. *See id.*

Plaintiffs' allegation that Warner failed to collect the HS&WT debt does not alter that conclusion. The Amended Complaint alleges that the HS&WT notes were in default by January 2010 and that Warner thereafter failed to call them.[66] But the continuing wrong doctrine does not apply simply because a fiduciary fails to remedy the consequences of an earlier alleged wrong. *See Desimone v. Barrows*, 924 A.2d 908, 925 (Del. Ch. 2007) ("[I]t is settled that the failure to remedy a wrong does not mean that the wrong is continuing."). Plaintiffs cannot transform the completed lending and financing decisions into a single continuing wrong by combining them with Warner's subsequent failure to collect the resulting debt. Accordingly, the discrete act method governs. Because the last challenged act occurred no later than December 31, 2016,[67] even the latest-accruing aspect of Plaintiffs' breach of fiduciary duty claim is presumptively time-barred.

Plaintiffs' unjust enrichment claim likewise accrued no later than 2016, when Warner allegedly received the benefits of the challenged transactions.[68] *See Lehman Bros. Hldgs., Inc. v. Kee*, 268 A.3d 178, 195–97 (Del. 2021) (explaining that an unjust enrichment claim accrued at the closing of the challenged transaction, when

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[66] Am. Compl. ¶¶ 26, 81(d).

[67] *See* Am. Compl. ¶ 88(d) (identifying 2016 as the date of the latest challenged loan). Although Plaintiffs allege that the amounts outstanding on certain loans changed in later years, those allegations concern the balances of existing loans, not the issuance of additional loans. *See id.* ¶¶ 33(e), 36–37, 89.

[68] *See* Pls.' Answering Br. 49 ("Plaintiffs do not dispute that the unjust enrichment claim against Warner arises largely from the same conduct underlying the breach of contract claim.").

the alleged wrongful act and resulting enrichment occurred); *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 42–43 (Del. Ch. 2012) (concluding that an unjust enrichment claim accrued when the defendant received the benefits of the challenged transaction).

Because Plaintiffs' claims against Warner accrued no later than the end of 2016 but were not filed until 2025, they are presumptively time-barred.

3. Plaintiffs' claims are time-barred because they were on inquiry notice in 2016.

The presumption that Plaintiffs' claims are barred by laches is not irrebuttable. *See Moelis*, 360 A.3d at 237. Plaintiffs may overcome that presumption by establishing a basis for tolling or by demonstrating unusual circumstances that would render application of laches inequitable. *Id.* at 237–38. "Tolling suspends or stops the running of a limitations period—it is analogous to a clock stopping and then restarting." *LGM Hldgs., LLC v. Schurder*, 340 A.3d 1134, 1147 (Del. 2025) (citation modified). Plaintiffs invoke two tolling doctrines: fraudulent concealment and equitable tolling.

"The doctrine of fraudulent concealment tolls the statute of limitations and extends the time for suit under the doctrine of laches 'when a defendant has fraudulently concealed from a plaintiff the facts necessary to put him on notice of the truth.'" *Collis*, 287 A.3d at 1214 (quoting *In re Tyson Foods, Inc. Consol.*

S'holder Litig., 919 A.2d 563, 585 (Del. Ch. 2007)). But fraudulent concealment does not excuse a plaintiff from acting diligently. "Even where a defendant uses every fraudulent device at its disposal to mislead a victim or obfuscate the truth, no sanctuary from the statute will be offered to the dilatory plaintiff who was not or should not have been fooled." *Id.* at 1212 (quoting *Tyson Foods*, 919 A.2d at 585).

"'The doctrine of equitable tolling stops the statute from running while a plaintiff has reasonably relied upon the competence and good faith of a fiduciary.'" *Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton*, 294 A.3d 65, 94 (Del. Ch. 2023) (quoting *Tyson Foods*, 919 A.2d at 585). "But it does so if—and only if—the reliance is reasonable." *Buddenhagen v. Clifford*, 2024 WL 2106606, at *26 (Del. Ch. May 10, 2024), *aff'd*, 351 A.3d 447 (Del. 2025) (ORDER). "To invoke this doctrine and save an otherwise time-barred claim, plaintiff must plead specific facts to demonstrate reliance on a self-dealing fiduciary, and that this reliance prevented the plaintiff from being on inquiry notice of the wrongs perpetuated by its fiduciary." *Jacam Chem. Co. 2013, LLC v. Jacam Chem. Co. Inc.*, 2024 WL 960180, at *10 (Del. Ch. Mar. 1, 2024) (citation modified).

In other words, both tolling doctrines are subject to a common limitation: inquiry notice. *Collis*, 287 A.3d at 1212. Tolling ends "when the plaintiff was objectively aware, or should have been aware, of facts giving rise to the wrong." *Id.*

(citation modified); *see also LGM*, 340 A.3d at 1147. "Inquiry notice does not require actual discovery of the reason for the injury or awareness of all of the aspects of the alleged wrongful conduct." *Reilly*, 2025 WL 2781735, at *7 (citation modified). Rather, "[i]t exists when the plaintiff knew or had reason to know of the facts constituting the wrong." *Id.* (citation modified). "Suspicious facts, or red flags, require a plaintiff to diligently investigate and to file within the limitations period as measured from that time." *In re Swisher Hygiene, Inc.*, 2020 WL 3125415, at *3 (Del. Ch. June 12, 2020) (citation modified).

Plaintiffs contend that the limitations period remained tolled until June 2024, when they obtained an amortization schedule for the HS&WT Notes showing that the interest rates had been retroactively adjusted in 2007.[69] According to Plaintiffs, those irregularities prompted them to investigate further, which led them to uncover the other alleged misconduct. They say that "[w]ithout the amortization schedule, Plaintiffs had no basis to bring a lawsuit."[70]

Plaintiffs misapprehend Delaware law on inquiry notice. Inquiry notice does not require disclosure of every fact or document necessary to prove liability. *See Sunrise Ventures, LLC v. Rehoboth Canal Ventures, LLC*, 2010 WL 363845, at *7

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[69] Am. Compl. ¶¶ 65–66.

[70] Pls.' Answering Br. 27.

(Del. Ch. Jan. 27, 2010) ("Inquiry notice does not require a plaintiff to have actual knowledge of a wrong, but simply an objective awareness of the facts giving rise to the wrong."). The question is whether Plaintiffs had "sufficient knowledge to raise their suspicions to the point where persons of ordinary intelligence and prudence would commence an investigation that, if pursued would lead to the discovery of the injury." *Pomeranz v. Museum P'rs, L.P.*, 2005 WL 217039, at *3 (Del. Ch. Jan. 24, 2005).

A proper application of the standard demonstrates that the financial statements Plaintiffs received in 2016 provided sufficient information to raise their suspicions and prompt an investigation that would have led to discovery of their claims.[71] The 2016 assets and liabilities statement disclosed approximately $7.05 million in notes receivable from HS&WT, more than $1.13 million in notes receivable from Warner,

[71] *See* Warner's Exs. E & D. Plaintiffs allege that they began receiving profit and loss reports in 2016 and rely on the information reported in those financial statements—including the reported interest income—in support of their claims. *See, e.g.*, Am. Compl. ¶¶ 48–53. The court may consider the 2016 financial statements because they are incorporated by reference and integral to the Amended Complaint. *See Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752, 797 (Del. Ch. 2016) ("A plaintiff may not reference certain documents outside the complaint and at the same time prevent the court from considering those documents' actual terms."), *abrogated on other grounds by Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019); *Freedman v. Adams*, 2012 WL 1345638, at *5 (Del. Ch. Mar. 30, 2012) ("When a plaintiff expressly refers to and heavily relies upon documents in her complaint, these documents are considered to be incorporated by reference into the complaint." (citation modified)).

and approximately $655,000 in notes receivable from Joshua. The accompanying profit and loss statement reported only $49,392 in annual interest income on the Company's notes receivable. The assets and liabilities statement also reflected a $1.438 million reserve for uncollectibility. Viewed together, those figures revealed that the Company reported only approximately $49,000 in annual interest income on more than $7.7 million in net notes receivable—approximately 0.64% of the outstanding balance.[72]

The disparity between the outstanding notes receivable and the reported interest income was itself a glaring red flag sufficient to prompt further investigation. *See Swisher*, 2020 WL 3125415, at *3 ("Suspicious facts, or red flags, require a plaintiff to diligently investigate." (citation modified)); *Gallagher Indus., LLC v. Addy*, 2020 WL 2789702, at *15 (Del. Ch. May 29, 2020) ("Even casual attention to the public filings would have revealed further red flags to notify [the plaintiff] of the facts underlying this litigation."). Plaintiffs contend that they "had no basis to bring a lawsuit" until they obtained the amortization schedule in 2024.[73] But the disparity reflected in the 2016 financial statements was, at a minimum, sufficient to raise concerns about the loan terms and the interest they were generating.

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[72] *Compare* Warner's Ex. E, *with* Warner's Ex. D.

[73] Pls.' Answering Br. 26–27.

See Buddenhagen, 2024 WL 2106606, at *27 ("[The plaintiff] may not have had specific knowledge of the intricacies of Defendants' alleged breaches of fiduciary duty, he certainly had enough information to cause a reasonable stockholder to raise his eyebrows and investigate further."); *In re Dean Witter P'ship Litig.*, 1998 WL 442456, at *8 (Del. Ch. July 17, 1998) ("[T]he trusting plaintiff still must be *reasonably attentive* to his interests"), *aff'd*, 725 A.2d 441 (Del. 1999).

Once Plaintiffs received the 2016 financial statements, they were no longer entitled to rely on Warner. *See Gallagher*, 2020 WL 2789702, at *12 (Del. Ch. May 29, 2020) ("[W]hile plaintiffs are entitled to rely on the competence and good faith of a fiduciary, they are not entitled to ignore red flags.").[74] Plaintiffs were also required to investigate further, which would have uncovered the information necessary to file a complaint. *See In re Primedia, Inc. S'holders Litig.*, 2013 WL 6797114, at *13–14 (Del. Ch. Dec. 20, 2013). They did not. Had they done so, they could have obtained the underlying debt documents they now contend were necessary to pursue this action. *See id.* at *14 (concluding that once on inquiry notice, a stockholder could have conducted an investigation, including by invoking 8 *Del. C.* § 220, that would have uncovered the information necessary to plead the

[74] The Operating Agreement entitled Plaintiffs, as Members, to review the Company's books and records. Operating Agreement § 4.2.

claim); *Gallagher*, 2020 WL 2789702, at *14 (concluding that the plaintiff "had an obligation to diligently investigate and was on notice of everything to which such an investigation would have led").[75]

Plaintiffs have been on inquiry notice of their claims since at least as early as 2016. They filed this action in 2022, years after the analogous statute of limitations expired, and they have neither alleged nor persuasively argued unusual conditions or extraordinary circumstances that would warrant tolling or departing from the analogous statute of limitations.

Accordingly, Plaintiffs' claims against Warner are time-barred.

III. CONCLUSION

Defendants' motions to dismiss are **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Paul A. Fioravanti, Jr.

Vice Chancellor

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[75] Plaintiffs conceded at oral argument that their receipt of the 2016 financial statements put them on inquiry notice of their breach of contract claims, which alleged that Warner executed Major Decisions without the approval of Members holding at least 85-percent of the Company's units. Oral Arg. Tr. at 40. They insist, however, that these financial statements did not put them on inquiry notice of their breach of fiduciary duty claims and unjust enrichment claims.